

ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

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Deborah Lathen, Chief
Cable Services Bureau
Federal Communications Commission
445 12th Street, SW
Suite 3C-754
Washington, DC 20554

Margita E. White
President

Re: Docket No. 98-120

Dear Ms. Lathen:

This is in response to Dan Brenner's letter of October 5 and its effort to interpret the recent Congressional Budget Office report on digital television to mean something other than what it clearly said:

"a strong must-carry requirement for cable systems to carry DTV signals . . . will be necessary to achieve the mandated market penetration by 2006 . . ." ¹

The principal rhetorical device Mr. Brenner uses to undercut this conclusion is to argue that cable carriage alone can't achieve the 85% benchmark for DTV penetration that the 1997 Balanced Budget Act established as the requisite for the analog channel give-back. Mr. Brenner's letter contends that the "transition's end date will hinge" on non-cable subscribers, "who can't afford or don't want multichannel TV" but who nonetheless must purchase expensive DTV receivers before the 85% test is met. Therefore, the line of reasoning continues, since carriage rules will have no effect on non-cable homes, there is no benefit in the FCC's adopting them.

This argument is too simplistic. Cable homes' access to DTV, while not sufficient, will always be necessary to a successful DTV transition. But the crucial role of must-carry goes way beyond the need to make broadcast DTV accessible to cable homes. Instead, the

¹ Mr. Brenner's letter characterizes this conclusion as follows: "CBO's report concludes that cable carriage would not hurt and might help insure that the transaction ends in 2006."

logic is that cable homes are the most likely to produce DTV early adopters. If viewers in these homes can enjoy NFL football games, the networks' prime time line-up and movies in undegraded HDTV, they will buy DTV sets. Receiver manufacturers will respond by manufacturing in volume and, therefore, will offer lower prices. As a result, more consumers, at first predominantly cable subscribers but eventually non-cable viewers, will purchase DTV receivers. Programmers and others will respond by offering more DTV fare, thus accelerating the progression of interrelated factors that will eventually lead to the analog channel give-back. Broadcasters will also be encouraged to build and upgrade DTV facilities faster and to offer more DTV services. Mr. Brenner's letter ignores this central logic of the DTV must-carry rules.

After misunderstanding in order to trivialize the role of must-carry in the transition, Mr. Brenner's letter makes three additional points.

First, it argues that "it is highly unlikely that adding a handful of digital signals of insignificantly viewed stations will alter consumer behavior" (to induce consumers to purchase DTV receivers). But Mr. Brenner's letter, though it cites network/cable carriage deals, provides no evidence that even major-market affiliates of the four major networks will be carried in the absence of must-carry. Based on polling the MSTV Board, we know of no existing carriage deal between any non-network O&O and cable operator.

Second, the letter criticizes the CBO report for focussing on auction revenues. CBO undoubtedly did so because its function is to understand the consequences in this respect of the FCC's failure to adopt digital must-carry rules. In fact, must-carry should be mandated not because of revenue considerations but because in 1992 Congress realized that if the public's broadcast DTV service were to have a realistic opportunity to succeed, the FCC had to adapt the carriage rules-of-the-road at the outset of the transition to enable the marketplace to function fairly and effectively in the digital environment as in the analog.

Mr. Brenner's letter asserts that digital must-carry would lessen subscribers' viewing choices and harm "cable networks seeking access to scarce cable channel capacity." But it fails to take account of the fact that since the DTV standard was adopted, huge increases in cable channel capacity have occurred and more are slated. Moreover, MSTV's capacity-based implementation proposal would greatly reduce the impact of must-carry on cable programmers.

Third, Mr. Brenner's letter concludes with the proposition that the viewers intended to be protected by the Supreme Court's decision upholding the constitutionality of the must-carry principle -- namely, non-cable viewers -- would be hurt by the analog channel give-back and therefore would be injured by the FCC's adopting DTV must-carry rules. In one sense, this sophistry is completely dispelled by the fuller explanation, provided above, of how cable subscribers and non-cable viewers would transition to digital in a seamless, interrelated process. In another sense, this last point concedes what Mr. Brenner's main point refuses to acknowledge -- that a DTV must-carry requirement can and will speed the DTV transition. In any event, Congress and the FCC have already found that the American public would benefit from the early roll-out of over-the-air digital services and from the channel give-back requirement adopted in the Balanced Budget Act.

From its earliest conception, the digital conversion, though intruding most severely on broadcast operations, has relied on parallel cooperative efforts on the part of the cable industry. Mr. Brenner's letter is just the most recent example of cable's insistence, instead, of using the transition to further entrench its bottleneck power against the nascent potential of digital television to offer competitive services to the public.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Margita E. White".

Margita E. White

cc: Roy Stewart, Chief, Mass Media Bureau, FCC
Robert Pepper, Chief, Office of Plans and Policy, FCC
Tom Power, Senior Legal Advisor, Office of the Chairman
Rick Chessen, Senior Legal Advisor, Office of Commissioner Tristani
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Magalie Salas, Secretary, Office of the Secretary, CS Docket No. 98-120
Daniel Brenner, Esquire